IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1730 OF 2006

Dr.Pramod Shivshankar Shivgunde ..Applicant

V/s.

Basavraj Sidramappa Mench & anr. ..Respondents

Mr.Milind Deshmukh, advocate for the applicant
Mr.D.P.Adsule, APP for the State

CORAM : J.H.BHATIA, J.

DATE : 20TH APRIL, 2007

P.C.

1. Heard Mr.Milind Deshmukh, the learned counsel for the applicant. Perused the record.

2. The applicant, who is the original complainant, has filed this application seeking leave to prefer an appeal aginst the order of acquittal under Section 138 of the Negotiable Instrument Act, 1881. According to the applicant, the respondent No.1 had issued two cheques for the amount of Rs.40,000/- and Rs.30,000/- respectively

on 21st July, 1992 drawn on Bank of Maharashtra, branch Gulberga, State Karnatak in favour of his wife. Both these cheques were presented for encashment but they were returned dishonoured with remark "Not arranged for". Thereafter, wife of the complainant issued a notice to the respondent but inspite of the notice he failed to make the payment. However, the complaint was filed by the applicant himself. The learned trial Court found that the applicant could not be complainant in the matter because cheques were not issued in his favour nor he is himself aggrieved party. He was also not holding Power of Attorney on behalf of his wife while presenting complaint or even thereafter. Several authorities were referred before the trial Court. Relying upon **Mamtadevi Prafullakumar Bhansali Vs. Pushpadevi Kailaskumar Agarawal (2005(2)Mh.L.J.1003)** an authority from this Court, the learned Magistrate held that only the holder of a cheque is a person who is affected or injured and is entitled to file a complaint. However, Power of

Attorney Holder, who is duly and properly authorized can file a complaint under Section 142 of the Negotiable Instrument Act, 1881. He opined that nobody, who is neither aggrieved party nor duly constituted Power of Attorney holder, can file a complaint. The reasons given for the acquittal are correct. It is material to note that even the present application seeking leave to prefer an appeal is also filed by the husband and not by the wife, who is the aggrieved party.

3. In view of the above circumstances, leave to prefer an appeal is refused. The Criminal Application stands rejected.

(**J.H.BHATIA, J.**)